PART 2 – CONFIDENTIAL FACTS AND ADVICE

DD2305	
Title:	**Marshgate Lane & Woodlands and Masters House Loans – London Boroughs of Newham and Lambeth**

Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.

This information is not suitable for publication until the stated date because:

It contains commercially sensitive information the disclosure of which might prejudice the commercial and business interests of GLA Land and Property Limited. It also contains legally privileged information.

Date at which Part 2 will cease to be sensitive or when this information should be reviewed with a view to publication: **1st June 2023**

Legal adviser recommendation on the grounds for not publishing information at this time:

Under section 43 of the Freedom of Information Act information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the GLA). Under section 42 of that Act information is exempt if its disclosure would, or would be likely to, involve the disclosure of information that is legally privileged.

These are both qualified exemptions, meaning that information captured under sections 42 and 43 can only be withheld if the public interest in withholding it outweighs the public interest in releasing it. The information below contains information relating to confidential assessments of the schemes relating to the proposed Marshgate & Woodlands loans; the proposed structure and terms of the funding; and confidential information relating to the proposed recipient of the funding and other stakeholders. This is all commercially sensitive information, the disclosure of which would, or would be likely to, prejudice the commercial interests of GLALP, and other organisations specified below. While there is a public interest in understanding the circumstances in which public money is provided to other bodies, it is considered that in these circumstances the public interest lies in maintaining the exemption and withholding the information.

If this information is considered for release pursuant to the provisions of the Environmental Information Regulations 2004, this information should be considered exempt information under regulation 12(5)(e) – where disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

The information below also contains legally privileged advice relating to the above, particularly in connection with the contractual arrangements and State Aid. It is also considered that, in the circumstances, the public interest lies in maintaining the exemption and withholding the information.

Legal Adviser - I make the above recommendations that this information is not suitable for publication at this time.

Name: TfL Legal **Date:** 27 November 2018

Once this form is fully authorised, it should be circulated with Part 1.

Decision and/or advice:

Clearly set out the decision or sensitive advice which is not suitable for publication.

1. Confidential information

1.1 Anthology Kennington Stage Limited (AKS) and Anthology Development 6 Limited (AD6) will use the £21.854million and £27.905million loan facilities to re-finance the land acquisitions and provide development finance at the Woodlands and Masters House (LB Lambeth) and the Marshgate Lane (LB Newham) sites respectively.

1.2 The GLA Land and Property Limited (GLALP) loans are being used to assemble and acquire the sites, enabling the counterparties to bring forward the schemes earlier than they otherwise would have been. The loans also reduce reliance on parent company funding and enable them to increase the level of affordable housing delivery from 14% (on one site) to no less than 50% on both sites. The proposed schemes will deliver over 600 new homes in London by 2022.

1.3 Lambert Smith Hampton (LSH) have undertaken project due diligence on the cash flows and other information provided by Anthology Group Limited (AGL) using a Land Fund Development appraisal kit. A detailed summary of each proposal is below:

Woodlands and Masters House, Dugard Way, London SE11 4TH - LB Lambeth

Proposition

1.4 The former NHS Site was purchased by AKS in 2018 without the benefit of planning approval for £15.5 million. AKS are seeking planning approval for 254 units with a range of unit types and sizes. Planning is expected to be submitted in June 2019 and granted late 2019 with the 31st December as the contractual milestone date. The project cash flow shows a 48-month development programme from November 2018 through to October 2022.

Funding Summary

1.5 The loan granted directly from GLALP totals £21.854million but will be structured effectively in two parts. The initial drawdown which is due to be claimed in December 2018 is £11.6million and will be used by AKS to repay the loan made to it by AGL (the parent company) to enable AKS to purchase the site.

1.6 Note, due to delays setting up the project account, this initial payment will be made directly to Anthology Group Limited. The establishment of the project account and deposit account, with the appropriate charges being granted and perfected over such amounts is a condition to any subsequent drawdown. GLALP's external legal advisers have confirmed they do not consider the fact that the payment will be made to AGL directly will affect any of GLALP's rights or remedies under the loan.

1.7 The loan is profiled to be drawn down as per the cash flow analysis attached at annex 1which shows the initial draw in December 2018 with the subsequent drawdown in September 2019 following receipt of planning approval. Following this, drawdowns are at irregular intervals until peak debt is reached in June 2021. Repayments are expected to be made from disposal receipts from completed dwellings in 2022.

1.8 £11.2million of the funding for the scheme is to be provided by a committed intercompany loan from AGL. AGL are expecting this funding to come from recycled receipts from the Marshgate Lane scheme, however we have received confirmation from AGL that this loan will be a committed facility which will be ringfenced and will not be dependent on AGL receiving the recycled receipts from the Marshgate Developer, AD6.

1.9 It should be noted that although repayments are expected by June 2022, under the facility agreement AKS are only contractually obliged to repay the loan in December 2022. GLA officers consider that this is acceptable on the basis of the security package offered.

1.10 Interest is calculated and paid bi-annually.

Risk Mitigation

1.11 To mitigate the exposure risk for GLALP, planning consent for the site is a condition precedent to any subsequent drawdown on the loan. This limits GLALP's exposure until the site has the benefit of planning permission at which point it will offer better collateral for the loan. In addition, GLALP has the benefit of a guarantee from Anthology Group Ltd guaranteeing to pay GLALP the difference between the value of the site without planning permission and the value of the site with the benefit of planning permission in the event that there is a breach of either the Loan to Cost or Loan to Gross Development Value covenants (see 1.24 below).

1.12 The total development costs for the scheme are £89.546million and the scheme therefore requires additional funding. It has been agreed with Anthology Group that it may recycle funds from the Marshgate scheme to fund the cost of development at Woodlands and Masters House (with such funds from the Marshgate scheme being lent by AD6 to AGL and then AGL will provide a committed loan facility to AKS). The risk of making the Woodland and Masters scheme dependent on proceeds from Marshgate has been mitigated by making the funding under the Woodland and Masters facility agreement conditional upon a committed intercompany loan agreement from AGL to AKS for £11.2million ring fenced for the use of the scheme and not dependent on Marshgate receipts.

1.13 In their assessment of the project LSH have advised that the majority of the sales and development assumptions are broadly in line with expectations however did highlight some specific risks relating to:

- High off-plan sales rate;
- Low build costs; and
- Higher than average Ground Rents.

1.14 In mitigation of these, AKS has demonstrated that even if the sales rate were to be reduced, they are able to repay the GLALP loan and also keep peak debt within £49.8m as agreed.

1.15 Building costs were on the lower end of the range recommended by the consultants. However, it should be noted that Anthology based their cost estimates using actual costs from a similar scheme which they recently contracted, and then increased the rate by 5.7%, so their estimate could be considered to be accurate.

1.16 The loan has been agreed on the basis of the output of 254 units of which no fewer than 50% will be affordable. These are included within the facility agreement as agreed outputs. There is a planning risk as the scheme requires planning approval for the proposed density. Anthology are confident, through positive pre-application discussions and the significant level of affordable housing being provided on site that these can be achieved. The risk to GLALP is mitigated as non-compliance with the agreed outputs would trigger an event of default within the facility agreement and GLALP can either require immediate repayment of the funding or renegotiate the housing outputs with the counterparty. The planning risk is further mitigated by the guarantee from AGL as described in paragraph 1.11 above.

Counterparty

1.17 The counterparty for this transaction is AKS, as wholly owned subsidiary of Anthology Group Ltd. AKS are a development company set up for the purpose of acquiring the site and developing and selling the homes.

1.18 A credit worthiness assessment of the counterparty (and parent company) was undertaken by the Transactions Team and GLA Group Finance. The credit worthiness of the counterparty on this basis was agreed to be 'weak' which was agreed at Interest Rate Setting Board (IRSB) on 18th July 2018 and the Land Fund Investment Committee (LFIC) on the 24th July 2018.

1.19 AGL are a small/medium sized developer with 988 homes under construction at the end of 2017. Their Hoxton Press development is their first scheme to reach practical completion in 2018. Revenue in 2017 was £3.4million although the organisation made a loss. Having reviewed the unaudited management accounts provided as part of the due diligence process, revenue has increased to £50.5million in 2018 with the organisation set to record its first profit of £8.00million.

1.20 The categorisation of the counterparty was based on AGL's limited delivery track record and the use of an SPV as the contracting entity.

Security Package

1.21 The security package for the scheme comprises a legal charge over the Woodlands and Masters House site under a debenture, fixed and floating charges over AKS's other assets and a first charge of all the shares in AKS.

1.22 AGL are also providing a guarantee to GLALP guaranteeing to pay GLALP the difference between the value of the site without planning permission and the value of the site with the benefit of planning permission in the event that there is a breach of either the Loan to Gross Development Value covenant or the Loan to Cost covenant. The guarantee falls away once planning to the satisfaction of GLALP is achieved and valuation supports drawn debt.

1.23 Having received a valuation by CBRE, the market value of the freehold interest in the site with the benefit of planning permission is £19.5million. This is higher than the purchase price £15.5million. The purchase price has been confirmed within the valuation as the market value of the land without planning based on a residual appraisal and other market evidence collated by the valuers from other bidders within the sale process. This value does include a level of 'hope value' relating to the securing of planning permission for the site. It is noted by the valuers that delays to the planning process could negatively impact this value but they are confident in their assessment of value on the basis of the volume and level of bids received by the vendors throughout the marketing process. The Existing Use Value of the site if development potential is disregarded is £3.53million.

1.24 The covenants, as agreed at IRSB and Land Fund Investment Committee are:

- Loan to cost covenant of 70% (based on 100% land purchase price and 90% WIP); and
- Loan to value (gross development value) of 50%.

1.25 The valuation provides a Gross Development Value in excess of the current assumption within the cashflow at £118.2 million.

1.26 On this basis the collateral position was agreed to be normal.

Marshgate Lane, 10-12 Marshgate Ln, London E15 2NH – LB Newham

Proposition

1.27 The Marshgate lane site comprises two phases which AD6 are in the process of acquiring. Phase 1 of the site will transfer to AD6 under licence arrangement with the current freeholders to undertake the redevelopment of the commercial accommodation and construction of the 75 residential units as per the planning permission. Following completion of the construction AD6 will pay the freeholder a lease premium and be granted a head lease for the residential units with each unit granted individual long leaseholds. The freeholder will retain the commercial accommodation.

1.28 Phase 2 of the site will transfer, subject to vacant possession, under a purchase agreement in January 2019. AD6 are seeking to increase the density of this part of the site to increase the number of homes to at least 275, taking the total homes delivered on the site to 350. Discussions have been held with LLDC and project milestones dictate that an application will be submitted by September 2019 and permission gained by February 2020.

1.29 The project cash flow shows a 39-month development programme from January 2019 through to March 2022.

Funding Summary

1.30 The loan granted directly from the GLA totals £27.905 million which will be used to fund the land acquisition and the development costs for phase 1 and 2 of the site.

1.31 The loan is profiled to be drawn down as per the cash flow analysis attached at annex 1 which shows the initial draw in January 2019 following the legal transfer of the Phase 2 site with subsequent drawdowns occurring regularly until October 2019 and then again between August and December 2020, when peak debt is reached.

1.32 Approximately £15m is expected to be repaid in early 2021 with the remainder of repayment occurring expected between August 2021 and December 2021 in uneven instalments.

1.33 It should be noted that although repayments are expected by December 2021, under the facility agreement AD6 are only contractually obliged to repay the loan in December 2022. GLA officers consider that this is acceptable on the basis of the security package offered.

1.34 Due to the requirement for additional funding for Woodlands and Masters House scheme, AD6 are expecting to recycle capital generated from Marshgate Lane through AGL to fund development costs at Woodlands and Masters House. In the cash flow £11.2million is to be advanced by way of an intercompany loan from AD6 to AGL between June 2021 and January 2022 with full repayment expected to be made from disposal receipts from completed dwellings in 2022.

1.35 Interest is calculated and paid bi-annually.

Risk Mitigation

1.36 The intercompany loan does create a repayment risk for GLALP if the Woodlands and Masters House scheme stalls or does not generate the required returns to repay AD6. This is mitigated by the structure of the intercompany loans with the first covering the payment of funds from AD6 to AGL and a second, independent loan from AGL to AKS. As a result, the loan is not dependent on returns from Woodgate and under the loan from AD6 to AGL, AD6 can recall funds from AGL at any time.

1.37 In their assessment of the project LSH have advised that the majority of the sales and development assumptions are broadly in line with expectations however did highlight some specific risks relating to:

- High off-plan sales rate;
- Higher than average Ground Rents.

1.38 In mitigation of these, AKS has demonstrated that even if the sales rate were to be reduced, they are able to repay the GLALP loan and also keep peak debt within £49.8m as agreed.

1.39 The loan has been agreed on the basis of the output of 350 units of which no fewer than 50% will be affordable. These are included within the facility agreement as agreed outputs. There is a slight planning risk in relation to phase 2 of the site which requires a variation to the existing planning approval for the proposed increased densities. This is mitigated as non-compliance with the agreed outputs would trigger an event of default within the facility agreement and GLALP can either require immediate repayment of the funding or renegotiate the housing outputs with the counterparty.

Counterparty

1.40 The counterparty for this transaction is AD6, a wholly owned subsidiary of Anthology Group Ltd. AD6 are a development company set up for the purpose of acquiring the site and developing and selling the homes.

1.41 A credit worthiness assessment of the counterparty (and parent company) was undertaken by the Transactions Team and GLA Group Finance. The credit worthiness of the counterparty on this basis was agreed to be 'weak' which was agreed at IRSB on 18th July 2018 and LFIC on the 24th July 2018.

1.42 AGL are a small/medium sized developer with 988 homes under construction at the end of 2017. Their Hoxton Press development is their first scheme to reach practical completion in 2018. Revenue in 2017 was £3.4million although the organisation made a loss. Having reviewed the unaudited management accounts provided as part of the due diligence process, revenue has increased to £50.5million in 2018 with the organisation set to record its first profit of £8.00million.

1.43 The categorisation of the counterparty was based on AGL's limited delivery track record and the use of an SPV as the contracting entity.

Security Package

1.44 The security package for the scheme comprises a legal charge over the Marshgate Lane site under a debenture (see paragraph 3.39 below for further details), fixed and floating charges over AD6's other assets and a charge on all of the shares in AD6.

1.45 The covenants, as agreed at IRSB and Land Fund Investment Committee are:

- Loan to Cost covenant of 70% (based on 100% land purchase price and 90% WIP); and
- Loan to Value (Gross Development Value) of 50%.

1.46 On this basis the collateral position was agreed to be normal.

Lambert Smith Hampton Due Diligence

1.47 LSH's due diligence work included project appraisal, comparable analysis of the proposed development costs and review of delivery milestones. LSH concluded in its report that overall the development risks associated with each scheme are not significant enough to prevent GLALP from providing funding, so long as appropriate mitigations have been made and suitable security is put in place.

1.48 However, LSH have had consideration of the GLA's wider loan portfolio and have noted the high level of exposure the GLA has to Anthology Group. Anthology already has two existing loan facilities with GLALP in relation to Wembley Parade £34.5m (of which £13.9m is drawn) which has a repayment date 31 March 2020 and Hale Village where a loan of £55.2m was provided.

1.49 The Marshgate Lane and Woodlands and Masters House loans total £49.8million which increases the GLA's exposure to £139.5million. This is mitigated through the security for these loans as described in this paper however it should be noted that exposure peaks at £ 95.8 million in November 2020 on the basis of the current cashflows. Whilst this level of exposure is only due to last for one month, there are inherent risks within development that may result in changes to this. The cashflow at Annex 2 shows the drawdown profile of the current loans (loans 1 & 2) and proposed loans (loan 3).

1.50 It should be noted however that these loans do facilitate the assembly and delivery of over 600 homes of which at least 50% (on habitable room basis) will be affordable housing. On this basis GLA Housing and Land officers have considered the risks associated with these findings and deem the mitigations suitably robust to justify providing funding for these schemes.

Interest Rate

1.51 This DD proposes two separate loans totalling £49.8 million to be resourced from the Land Fund under MD2207. The first loan is for £21.854 million for Woodlands and Masters House and the second totals £27.905 million for Marshgate Lane. Both loans are required to fund the acquisition and assembly of each site as well as development costs.

1.52 In arriving at the interest rate for Anthology Kennington Stage and Anthology Development 6, the IRSB and LFIC have relied on the following interest rate grid for their margin for risk. An organisation/project with weak credit worthiness and normal collateralisation attracts a risk margin of 4% (400 basis points). This is the adopted grid for the Greater London Authority and is very similar to the widely used state aid grid.

Creditworthiness	Collateralisation (basis points)		
	High	Normal	Low
Strong (AAA-A)	60	75	100
Good (BBB)	75	100	220
Satisfactory (BB)	100	220	400
Weak (B)	220	400	650
Very weak (B-)	400	650	825
Unsatisfactory (CCC & below)	650	825	1000

1.53 In common with all commercial lenders, GLALP sets its rates according to the following principle:

Offered Rate = Lender's cost of funds + margin for risk + costs

For lender's costs of funds whichever is greater between the European Commission Reference Rate and the Public Works Loan Board (PWLB) rate, the GLA's default source of finance, is used, plus 0.6%.

For margin for risk, the above table is used based on an assessment of collateral and credit worthiness. This table is in line with the Interest Rate Communication risk matrix which has been issued by the European Commission on the method for setting a proxy market interest rate for the purpose of assessing state aid compliance.

Costs are agreed with the borrower. They usually comprise, but are not limited to, GLALP's legal costs and may also include fees for valuations and due diligence.

1.54 For the lenders cost of funds, for AKS and AD6 we have used the PWLB Maturity Rate @ 27.11.18 for 4 to 4.5 years minus 20 basis points to achieve the PWLB certainty rate. This gives a rate of 1.73% which is currently higher than the EC reference rate at 1.00%.

1.55 The GLA has made an offer to AKS and AD6, subject to approval, of 6.5%. This is made on the basis of the cost of funds outlined in 2.4 and a risk premium predicated on a weak creditworthiness position and normal collateral position. As both counterparties are paying legal and other arrangement costs no additional cost premium has been added to this. This calculation is summarised below:

	Assumption	**Basis points**
Cost of Funds	PWLB certainty Rate	173
Premium on cost of debt	Set rate	60
Risk margin	Weak Creditworthiness/Normal Collateral at 70% LTC	400
Cost Premium	Costs paid for by counterparty	0
	Total Rate	**633 (6.33%)**

1.56 In offering a rate of 6.5% the GLA has mitigated the risk in a change in PWLB rate and any fluctuation to the EC Reference rate.

1.57 If the rates proposed in this report are approved, the rates will be set at a fixed rate for the duration of the loan.

2. Financial Comments

2.1 The Chief Investment Officer or Assistant Director Group Finance certifies that the pricing principles above have been complied with and (having obtained external legal advice on the terms of the facility agreements) that the other terms and conditions of the loans are structured in a prudent commercial manner.

2.2 Given that we judge our rate to be calculated in a commercial manner, and that we anticipate our contracts will contain the normal provisions found in commercial loans, we are satisfied we are meeting the requirements of the Market Economy Operator Test:

- GLALP lends "on terms and conditions which would be acceptable to a notional private lender operating under a normal market economy situation".

3. Legal comments

3.1 External lawyers have prepared and advised upon the draft facility agreements for the Woodlands & Masters House scheme and Marshgate Lane scheme respectively. Below is a summary of the two facility agreements.

<u>Woodlands & Masters House Site</u>

<u>Purpose and Scheme Funding</u>

3.2 The parties to the Facility Agreement are GLALP and Anthology Kennington Stage Limited (AKS).

3.3 The loan (up to an aggregate amount of £21,854,000, the "Total Commitment") is to be advanced by GLALP to AKS such that:

- the initial drawdown shall be used to repay Anthology Group Limited ("AGL") the costs of acquiring Woodlands & Masters House, Dugard Way, London SE11 4TH (the "Site"), up to an amount of £11,640,000 (the "Initial Drawdown");
- subsequent drawdowns shall be used to fund certain costs of the development at the Site ("Development Costs") and shall not, when aggregated with the amount of the Initial Drawdown, exceed the Total Commitment (the "Subsequent Drawdowns"); and
- any recycled funding may be used for application as further Development Costs for which AKS has not submitted any other claim or recycled funding request or received any other funding.

3.4 The Development Facility Agreement provides that the development will include outputs of not less than 254 dwellings of which no less than 50%, by habitable room, will be affordable housing dwellings, with the remainder being market sale dwellings.

3.5 The Facility Agreement requires AKS to start on site by 31 March 2020.

3.6 There are a number of conditions precedent to be provided by AKS before any funding is advanced. AKS will sign the Facility Agreement and simultaneously submit a utilisation request for the initial drawdown. GLALP's obligations under the Facility Agreement are subject to the satisfaction of certain initial conditions precedent and there are condition precedents which must be satisfied prior to the initial drawdown, including: corporate formalities; execution of the debenture over AKS's assets, the share charge over the shares in AKS and subordination agreement (which subordinates intragroup debt from AGL to AKS to the funding being provided by GLALP); copies of all documentation evidencing the intercompany loan; a valuation addressed to GLALP or given with a duty of care by the valuer in favour of GLALP; evidence required for any KYC requirements; a draft scheme budget; evidence that AKS continues to have sufficient funding to complete the scheme and any amount of funding identified in the scheme budget as due to be paid by AKS prior to the claim has been fully paid by AKS; and the delivery of a Certificate of Title.

3.7 Additionally, there must be evidence satisfactory to GLALP as to the level and availability of contributions from AKS.

3.8 Further conditions precedent must be satisfied prior to each subsequent drawdown. These include: evidence that the amount of the claim is in accordance with the scheme budget, the development costs have been incurred and it relates to development costs for which AKS has not submitted any other claim or recycled funding request; a construction timetable including the Milestones (including the installation of the frame, cladding and Practical Completion); of there being no cost overruns that have not been funded by AKS; the grant of planning permission including approval of siting, design, access and use, landscaping and materials for the whole of the scheme and completion of the related Section 106 Agreement; and establishment of the Project Account and the Deposit Account.

3.9 Further conditions precedent must be satisfied prior to each claim for recycled funding. Some of these are the same as the conditions precedent to the initial drawdown, such as evidence that AKS continues to have sufficient funding to complete the scheme. The amount of the claim must be in accordance with the scheme budget, such development costs have been incurred and the development costs must not have been the subject of any other recycled funding request.

3.10 AKS will also be required to satisfy certain conditions subsequent within three months of the date of the first subsequent drawdown. AKS will be required to provide, insofar as they have been entered into, all remaining collateral warranties and appointments of each member of the professional team, main contractors and key sub-contractors (or trade contractors), to the extent they have not been provided.

3.11 GLALP will advance the initial drawdown to refinance the costs of the acquisition of the Site, up to an amount of £11,640,000. Each subsequent drawdown will be advanced to AKS to fund the costs of development of the Site, up to an amount which, when aggregated with the amount of the initial drawdown, would not cause the Total Commitment to be exceeded. A claim for funding must be accompanied by evidence that the amount of the claim is in accordance with the scheme budget, as certified by the monitoring surveyor.

3.12 Interest shall accrue at the fixed rate of 6.5% per annum. Interest will accrue and be paid on a six-monthly basis.

3.13 Prior to the second drawdown being made, AKS must open the following accounts at a UK clearing bank approved by GLALP:

- Project Account: The proceeds of each claim for funding, and each claim for recycled funding relating to development costs will be paid into the project account. Any funds received from a Registered Provider and VAT amounts paid to AKS, shall also be paid into the project account. Unless an event of default is continuing, AKS will have sole control of this account and may make withdrawals to pay costs and expenses of the development in accordance with the scheme budget.
- Deposit Account: All sales proceeds received by AKS (net of certain costs and expenses and VAT) will be paid into the deposit account. Sums in the deposit account may be applied to repay the funding, or, subject to the satisfaction of the relevant conditions set out above, to meet ongoing development costs in accordance with the scheme budget provided that the monitoring surveyor has verified and approved the claim for such amount ("Recycled Funding"). GLALP will have sole signing rights in relation to the deposit account.

3.14 The loan must be repaid by 31 December 2022. In addition, AKS may (but is not obliged to), on giving not less than 15 business days' written notice, repay all or any part of the funding. Any amounts so repaid cannot be redrawn. AKS may not exercise any right of prepayment until GLALP has confirmed that it is reasonably satisfied that, after any such prepayment, AKS will have adequate funding to achieve Practical Completion.

Reporting/Exit Routes

3.15 AKS is obliged to provide a quarterly report to GLALP containing updated information about the scheme and its progress. AKS will also provide annual and management accounts to GLALP, as well as the updated list of AKS's book price for each of the Dwellings. AKS may not sell any of the market sale units for less than 80% of the book price (if sold on an individual basis) or less than 90% of the book price (if sold cumulatively). Each quarterly report must, amongst other things, demonstrate a satisfactory level of compliance with the following financial covenants:

- The Loan to Cost must not exceed 70%. The "Loan to Cost" is the proportion which the advanced funding (including any amount of capitalised interest), less the amount standing to the credit of the Deposit Account, but only to the extent that GLALP has determined those funds shall be applied in repayment of the Funding and not released as Recycled Funding, bears to 90% of the Development Costs incurred at that time.
- The Loan to Gross Development Value must not exceed 50%. The "Loan to Gross Development Value" is the proportion which the advanced funding, less the amount standing to the credit of the Deposit Account, but only to the extent that GLALP has determined those funds shall be applied in repayment of the funding and not released as recycled funding, bears to the market value of the completed scheme, calculated in accordance with the then most recent valuation.

3.16 An event of default occurs under certain circumstances. If this happens, GLALP has the right to enforce its security. These include (but are not limited to): a milestone failure occurs or is in the opinion of the monitoring surveyor likely to occur which is not the direct result of a milestone extension event; failure to pay any amount due under a finance document, subject to a 2 business day grace period where non-payment is as a result of technical delay in the transmission of funds; an event or circumstance occurs in relation to AKS that might in the opinion of GLALP have a material adverse effect; and cross default with other financial indebtedness.

3.17 It should be noted that before an event of default arises for failure to deliver the 254 homes (the "Outputs"), AKS will have the opportunity under the terms of the Facility Agreement to agree revised outputs with GLALP.

Security

3.18 GLALP will have a legal charge over the Site pursuant to a debenture, fixed and floating charges over all of AKS's other assets (including its rights in relation to the scheme project documents to which it is party) and a charge of all the shares in AKS. There is also a deed of subordination which subordinates all intra group debt made available to AKS to GLALP's debt although funding provided by AKS's parent to meet VAT costs may be repaid by AKS to the parent when the VAT is reclaimed from HMRC.

3.19 There is to be a committed loan agreement from AGL to AKS in an amount of £11,200,000. This will subordinated to the loan from GLALP and AKS will grant security over its rights under that loan agreement pursuant to the debenture.

3.20 AGL will also grant a guarantee in favour of GLALP. Pursuant to this guarantee and until planning permission has been granted, AGL guarantee to pay GLALP an amount equal to the difference between the market value of AKS's interest in the Site, without the benefit of planning permission, being £15.5million, and the market value of AKS's interest in the Site with the benefit of planning permission for the scheme. The guarantee can be called by GLALP if there is a breach of the Loan to Gross Development Value or Loan to Cost covenant.

Marshgate Lane Site

Purpose and Scheme Funding

3.21 The parties to the Facility Agreement are GLALP and Anthology Development 6 Limited (AD6).

3.22 The loan (up to an aggregate amount of £27,905,000, the "Total Commitment") is to be advanced by GLALP to AD6 such that:

- the initial drawdown shall be used to refinance the costs of the acquisition of the land and buildings at 10, 12 and 14 Marshgate Industrial Estate, Marshgate Lane, London E15 2NH (the "Site"), up to an amount of £10,127,000 and to fund certain costs of the development at the Site ("Development Costs") (the "Initial Drawdown");
- subsequent drawdowns shall be used to fund Development Costs and shall not, when aggregated with the amount of the Initial Drawdown, exceed the Total Commitment (the "Subsequent Drawdowns"); and
- any recycled funding may be used for application as further Development Costs or advanced to Anthology Group Limited (AGL) by way of an intercompany loan ("Intercompany Loan") for which AD6 has not submitted any other claim or recycled funding request or received any other funding. The purpose of the Intercompany Loan is to enable funds to be lent by AGL to AKS (the developer of the Woodlands and Masters House scheme) by way of separate, committed loan facility from AGL to AKS.

3.23 The Development Facility Agreement provides that the development will include outputs of not less than 350 dwellings comprising:

- 75 dwellings on the Site relating to phase 1 of the scheme (the "Phase 1 Site"); and
- 275 dwellings on the Site relating to phase 2 of the scheme (the "Phase 2 Site")

and in each case of which no less than 50%, by habitable room, will be affordable housing dwellings.

3.24 The Facility Agreement requires AD6 to start on site by 31 January 2019 for the Phase 1 Scheme and not later than 31 March 2020 for the Phase 2 scheme.

3.25 There are a number of conditions precedent to be provided by AD6 before any funding is advanced. GLALP's obligations under the Facility Agreement are subject to the satisfaction of certain initial conditions precedent, including: corporate formalities; a draft of the scheme budget, a draft certificate of title in a form acceptable to GLALP in respect of the Developer's estate or interest in the site (being either the freehold estate to be transferred or the leasehold estate to be granted to the Developer in accordance with the Development Agreement in respect of the Headlease, to be a lease for a term of 99 year or more on term acceptable to GLALP by the Solicitors, which includes a report on the Development Agreement and the form of the Headlease; evidence required for any KYC requirements; and a copy of the ownership structure of AD6.

3.26 There are additional conditions precedent which must be satisfied prior to the initial drawdown, including: execution of the debenture over AD6's assets, the share charge over the shares in AD6 and the subordination agreement, (which subordinates intragroup debt from AGL to AKS to the funding being provided by GLALP); a valuation addressed to GLALP or given with a duty of care by the valuer in favour of GLALP; the delivery of a Certificate of Title in a form acceptable to GLALP in respect of the Developer's estate or interest in the Site (being either the freehold estate to be transferred or the leasehold estate to be granted to the Developer in accordance with the Development Agreement), which includes a report on the Development Agreement and the form of the Headlease which certifies among other things that the Site is free from any conditions, restrictions, covenants or third party interests which do or might affect the right to carry out and maintain the works; evidence that the amount of the claim is in accordance with the scheme budget, the development costs have been incurred and it relates to development costs for which AD6 has not submitted any other claim or recycled funding request; a construction timetable including the Milestones (including the installation of the frame, cladding and Practical Completion); establishment of the Project Account and the Deposit Account; evidence of compliance with the financial covenants and satisfaction of pre-commencement planning conditions.

3.27 Additionally, there must be evidence satisfactory to GLALP as to the level and availability of contributions from AD6.

3.28 Further conditions precedent must be satisfied prior to each subsequent drawdown. Some of these are the same as the conditions precedent to the initial drawdown, such as evidence that AD6 continues to have sufficient funding to complete the scheme and evidence of compliance with the financial covenants and evidence that the amount of the claim is in accordance with the scheme budget.

3.29 Further conditions precedent must be satisfied prior to each claim for recycled funding. Some of these are the same as the conditions precedent to the initial drawdown, such as evidence that AD6 continues to have sufficient funding to complete the scheme. If the recycled funding request relates to the advance of an intercompany loan, the request shall not, when aggregated with any previous such requests, exceed £11,200,000 and there must be no event of default continuing under the facility agreement between (1) GLALP and (2) Anthology Kennington Stage Limited (the "Woodlands Facility Agreement") relating to the Woodlands and Masters House scheme. If the recycled funding request relates to the payment of development costs, the amount of the claim shall be in accordance with the scheme budget, such development costs have been incurred and the development costs must not have been the subject of any other recycled funding request.

3.30 AD6 will also be required to satisfy certain conditions subsequent within three months of the date of the first subsequent drawdown. AD6 will be required to provide, insofar as they have been entered into, all remaining collateral warranties and appointments of each member of the professional team, main contractors and key sub-contractors (or trade contractors), to the extent they have not been provided.

3.31 AD6 shall grant supplemental security over the Headlease relating to phase 1and the solicitors shall provide a letter of undertaking relating to the title and other deeds to the Site and the registration of such supplemental security in favour of GLALP within 5 business days of the Headlease being granted.

3.32 GLALP will advance the initial drawdown to refinance the costs of the acquisition of the Site, up to an amount of £10,127,000 and to fund certain of the costs of development of the Site. Each subsequent drawdown will be advanced to AD6 to fund the costs of development of the Site, up to an amount which, when aggregated with the amount of the initial drawdown, would not cause the Total Commitment to be exceeded. If a recycled funding request relates to the advance of an intercompany loan, the request shall not, when aggregated with any previous such requests exceed £11,200,000 and there must be no event of default continuing under the Woodlands Facility Agreement. A claim for funding must be accompanied by evidence that the amount of the claim is in accordance with the scheme budget, as certified by the monitoring surveyor.

3.33 Interest shall accrue at the fixed rate of 6.5% per annum. Interest will accrue and be paid on a six-monthly basis

3.34 Prior to the Initial Drawdown being made, AD6 must open the following accounts at a UK clearing bank approved by GLALP:

- Project Account: The proceeds of each claim for funding, and each claim for recycled funding relating to development costs will be paid into the project account. Any funds received from a Registered Provider and VAT amounts paid to AD6, shall also be paid into the project account. Unless an event of default is continuing, AD6 will have sole control of this account and may make withdrawals to pay costs and expenses of the development in accordance with the scheme budget.
- Deposit Account: All sales proceeds received by AD6 (net of certain costs and expenses and VAT) will be paid into the deposit account. Sums in the deposit account may be applied to repay the funding, or, subject to the satisfaction of the relevant conditions set out above, to meet ongoing development costs in accordance with the scheme budget provided that the monitoring surveyor has verified and approved the claim for such amount ("Recycled Funding") or to AGL by way of an advance of the Intercompany Loan. GLALP will have sole signing rights in relation to the deposit account.

3.35 The loan must be repaid by 31 December 2022. In addition, may (but is not obliged to), on giving not less than 15 Business Days' written notice, repay all or any part of the Funding. Any amounts so repaid cannot be redrawn. AD6 may not exercise any right of prepayment until GLALP has confirmed that it is reasonably satisfied that, after any such prepayment, AD6 will have adequate funding to achieve Practical Completion.

Reporting/Exit Routes

3.36 AD6 is obliged to provide a quarterly report to GLALP containing updated information about the scheme and its progress. AD6 will also provide annual and management accounts to GLALP, as well as the updated list of AD6's book price for each of the Dwellings. AD6 may not sell any of the market sale units for less than 80% of the book price (if sold on an individual basis) or less than 90% of the book price (if sold cumulatively). Each quarterly report must, amongst other things, demonstrate a satisfactory level of compliance with the following financial covenants:

- The Loan to Cost must not exceed 70%. The "Loan to Cost" is the proportion which the advanced funding (including any amount of capitalised interest), less the amount standing to the credit of the Deposit Account, but only to the extent that GLALP has determined those funds shall be applied in repayment of the Funding and not released as Recycled Funding, bears to 90% of the Development Costs incurred at that time.

- The Loan to Gross Development Value must not exceed 50%. The "Loan to Gross Development Value" is the proportion which the advanced funding, less the amount standing to the credit of the Deposit Account, but only to the extent that GLALP has determined those funds shall be applied in repayment of the funding and not released as recycled funding, bears to the market value of the completed scheme, calculated in accordance with the then most recent valuation.

3.37 An event of default occurs under certain circumstances. If this happens, GLALP has the right to enforce its security. These include (but are not limited to): a milestone failure occurs or is in the opinion of the monitoring surveyor likely to occur which is not the direct result of a milestone extension event; failure to pay any amount due under a finance document, subject to a 2 business day grace period where non-payment is as a result of technical delay in the transmission of funds; an event or circumstance occurs in relation to AD6 that might in the opinion of GLALP have a material adverse effect; cross default with other financial indebtedness; and forfeiture or termination proceedings with respect to the Head lease or the Agreement for Lease are commenced or the Head lease or Agreement for Lease is terminated.

3.38 It should be noted that before an event of default arises for failure to deliver the 350 homes (the "Outputs"), AD6 will have the opportunity under the terms of the Facility Agreement to agree revised outputs with GLALP.

Security

3.39 GLALP will have a legal charge over the Site pursuant to a debenture, fixed and floating charges over all of AD6's other assets (including its rights in relation to the scheme project documents to which it is party) and a charge of all the shares in AD6. In relation to the Site, currently AD6's only interest in the Site is the Agreement for Lease in respect of Phase 1. When the debenture is entered into, this will secure this interest and the freehold in the Phase 2 Site. When the long leasehold interest in the Phase 1 Site is granted, AD6 will grant further security over this. In addition, GLALP will have security over AD6's interest in the Intercompany Loan. There is also a deed of subordination which subordinates all intra group debt made available to AD6 to GLALP's debt although funding provided by AD6's parent to meet VAT costs may be repaid by AD6 to the parent when the VAT is reclaimed from HMRC.

State Aid

3.40 It is GLALP's intention that the terms and conditions and the interest rate for these proposed loans to AD6 and AKS respectively are in line with those available on the open market. On that basis GLALP proposes to rely upon the Market Economy Operator Test (MEOT), which permits public bodies to lend to enterprises/economic undertakings on terms and conditions which would be acceptable to a notional private lender operating under a normal market economy situation. Providing the principle is properly complied with then no state aid arises as no advantage is conferred on the loan recipient.

3.41 The onus when relying on MEOT is for the public authority to justify (and if required prove) that its loan has complied with MEOT requirements. These include:

3.41.1 That the terms/conditions of the loan and interest rate are market terms for the particular circumstances of each transaction;
3.41.2 That a notional market lender would have lent to the particular loan recipient (e.g. they were creditworthy); and
3.41.3 That the terms of the loan properly reflect the security being offered.

3.42 External lawyers have advised the GLA as to whether the methodology for calculating a market interest rate set out in the EC Commission's Communication in relation to setting reference and discount rates (2008/C 14/02) (the Interest Rate Communication) is acceptable in respect of state aid compliance.

Their advice is that this methodology is widely used by public authorities in circumstances where they are making a market loan under MEOT but, in doing so, they are adopting a risk-based approach; by applying the methodology it is probable that in most circumstances the loans would be state aid compliant, though there is still a risk that not all will be.

3.43 Circumstances where unlawful state aid may still arise when using the proposed methodology include:

- 3.43.1 No market lender would have lent to the loan recipient (e.g. bad credit score or insolvency concerns);
- 3.43.2 Not applying the methodology as a notional market lender would (e.g. accepting poor security but scoring it as strong security);
- 3.43.3 Not commercially assessing and/or applying the credit scoring; or
- 3.43.4 In effect treating the application of the methodology as a process, rather than a tool to determine the correct market rate for the particular circumstances of each loan.

3.44 External lawyers have advised that the following steps should be followed by the GLA to help mitigate against these risks:

- 3.44.1 Ensure that the credit rating is current and from an independent respected organisation;
- 3.44.2 Properly consider any security being provided (including what is the market value of the assets being secured and order of priority of its security); and
- 3.44.3 Undertake a more detailed review of difficult cases, particularly if there are concerns that a notional market lender would never lend (e.g. insolvency concerns about the borrower).

3.45 GLA officers have confirmed that the above mitigating measures have been followed and external lawyers have been instructed to prepare and negotiate the funding contracts and security documentation for GLALP, including the incorporation of any provisions required to ensure compliance with state aid rules.

3.46 External lawyers have also advised on the ability of GLALP to adopt a fixed interest rate for its loans and whether this complies with the MEOT/state aid requirements. Their advice is that a loan with a fixed interest rate is acceptable under MEOT providing it complies with the requirements set out in paragraph 3.41 above. To rely upon this GLALP would require evidence that at the time the loan was granted a notional market lender would have offered the relevant fixed interest rate to that borrower in identical circumstances.

3.47 It should be noted that the Interest Rate Communication itself requires a variable interest rate. External lawyers have therefore advised that where a fixed rate loan is to be offered, the GLA would also require evidence from a suitably qualified commercial/financial adviser that a rate calculated using the Interest Rate Communication would also be offered in identical circumstances by a notional market lender for a fixed interest rate loan (or advise on the higher margin which a notional market lender would require). Such evidence would have to take into account the creditworthiness of the borrower, security offered and the identical circumstances of the proposed arrangement. External lawyers have advised that advice from an independent external financial adviser would provide the strongest evidence. However, GLA officers have confirmed that, in relation to the proposed loans to AD6 and AKS, this evidence has been provided by suitably qualified internal advisers. In so doing the GLA is accepting the risk that if the loan is ever challenged on state aid grounds, such internal sign-off may not be viewed as sufficient objective evidence that the fixed interest rate is a market rate.

Annex. 1. - Indicative drawdown / principle repayment table

Marshgate	Opening	Drawdown	Repayment	Closing
Mar-18	£0	£0	£0	£0
Apr-18	£0	£0	£0	£0
May-18	£0	£0	£0	£0
Jun-18	£0	£0	£0	£0
Jul-18	£0	£0	£0	£0
Aug-18	£0	£0	£0	£0
Sep-18	£0	£0	£0	£0
Oct-18	£0	£0	£0	£0
Nov-18	£0	£0	£0	£0
Dec-18	£0	£0	£0	£0
Jan-19	£0	-£10,127,067	£0	-£10,127,067
Feb-19	-£10,127,067	-£355,942	£0	-£10,483,009
Mar-19	-£10,483,009	-£725,468	£0	-£11,208,476
Apr-19	-£11,208,476	-£1,087,711	£0	-£12,296,188
May-19	-£12,296,188	-£812,860	£0	-£13,109,048
Jun-19	-£13,109,048	-£922,191	£0	-£14,031,239
Jul-19	-£14,031,239	-£954,471	£0	-£14,985,710
Aug-19	-£14,985,710	-£1,067,586	£0	-£16,053,297
Sep-19	-£16,053,297	-£1,600,981	£0	-£17,654,277
Oct-19	-£17,654,277	-£2,112,662	£0	-£19,766,939
Nov-19	-£19,766,939	£0	£0	-£19,766,939
Dec-19	-£19,766,939	£0	£0	-£19,766,939
Jan-20	-£19,766,939	£0	£0	-£19,766,939
Feb-20	-£19,766,939	£0	£0	-£19,766,939
Mar-20	-£19,766,939	£0	£0	-£19,766,939
Apr-20	-£19,766,939	£0	£0	-£19,766,939
May-20	-£19,766,939	£0	£0	-£19,766,939
Jun-20	-£19,766,939	£0	£0	-£19,766,939
Jul-20	-£19,766,939	£0	£0	-£19,766,939
Aug-20	-£19,766,939	-£116,011	£0	-£19,882,950
Sep-20	-£19,882,950	-£556,491	£0	-£20,439,441
Oct-20	-£20,439,441	-£6,259,774	£0	-£26,699,215
Nov-20	-£26,699,215	-£629,909	£0	-£27,329,124
Dec-20	-£27,329,124	-£575,876	£0	-£27,905,000
Jan-21	-£27,905,000	£0	£12,023,125	-£15,881,875
Feb-21	-£15,881,875	£0	£3,583,499	-£12,298,376
Mar-21	-£12,298,376	£0	£2,701,000	-£9,597,376
Apr-21	-£9,597,376	£0	£0	-£9,597,376
May-21	-£9,597,376	£0	£0	-£9,597,376
Jun-21	-£9,597,376	£0	£0	-£9,597,376
Jul-21	-£9,597,376	£0	£0	-£9,597,376
Aug-21	-£9,597,376	£0	£120,004	-£9,477,372
Sep-21	-£9,477,372	£0	£2,538,766	-£6,938,606
Oct-21	-£6,938,606	£0	£2,127,934	-£4,810,672

Nov-21	-£4,810,672	£0	£3,523,307	-£1,287,365
Dec-21	-£1,287,365	£0	£1,287,365	£0
Jan-22	£0	£0	£0	£0
Feb-22	£0	£0	£0	£0
Mar-22	£0	£0	£0	£0
Apr-22	£0	£0	£0	£0
May-22	£0	£0	£0	£0
Jun-22	£0	£0	£0	£0
Jul-22	£0	£0	£0	£0
Aug-22	£0	£0	£0	£0
Sep-22	£0	£0	£0	£0
Oct-22	£0	£0	£0	£0
Nov-22	£0	£0	£0	£0
Dec-22	£0	£0	£0	£0

Woodlands	Opening	Drawdown	Repayment	Closing
Mar-18	£0	£0	£0	£0
Apr-18	£0	£0	£0	£0
May-18	£0	£0	£0	£0
Jun-18	£0	£0	£0	£0
Jul-18	£0	£0	£0	£0
Aug-18	£0	£0	£0	£0
Sep-18	£0	£0	£0	£0
Oct-18	£0	£0	£0	£0
Nov-18	£0	-£11,640,000	£0	-£11,640,000
Dec-18	-£11,640,000	£0	£0	-£11,640,000
Jan-19	-£11,640,000	£0	£0	-£11,640,000
Feb-19	-£11,640,000	£0	£0	-£11,640,000
Mar-19	-£11,640,000	£0	£0	-£11,640,000
Apr-19	-£11,640,000	£0	£0	-£11,640,000
May-19	-£11,640,000	£0	£0	-£11,640,000
Jun-19	-£11,640,000	£0	£0	-£11,640,000
Jul-19	-£11,640,000	£0	£0	-£11,640,000
Aug-19	-£11,640,000	£0	£0	-£11,640,000
Sep-19	-£11,640,000	-£73,286	£0	-£11,713,286
Oct-19	-£11,713,286	£0	£0	-£11,713,286
Nov-19	-£11,713,286	£0	£0	-£11,713,286
Dec-19	-£11,713,286	£0	£0	-£11,713,286
Jan-20	-£11,713,286	£0	£0	-£11,713,286
Feb-20	-£11,713,286	-£18,267	£0	-£11,731,553
Mar-20	-£11,731,553	-£542,426	£0	-£12,273,979
Apr-20	-£12,273,979	-£1,397,583	£0	-£13,671,562
May-20	-£13,671,562	£0	£0	-£13,671,562
Jun-20	-£13,671,562	£0	£0	-£13,671,562
Jul-20	-£13,671,562	£0	£0	-£13,671,562
Aug-20	-£13,671,562	£0	£0	-£13,671,562

Sep-20	-£13,671,562	£0	£0	-£13,671,562
Oct-20	-£13,671,562	£0	£0	-£13,671,562
Nov-20	-£13,671,562	£0	£0	-£13,671,562
Dec-20	-£13,671,562	£0	£0	-£13,671,562
Jan-21	-£13,671,562	£0	£0	-£13,671,562
Feb-21	-£13,671,562	£0	£0	-£13,671,562
Mar-21	-£13,671,562	-£1,246,116	£0	-£14,917,678
Apr-21	-£14,917,678	-£2,509,408	£0	-£17,427,086
May-21	-£17,427,086	-£2,701,673	£0	-£20,128,759
Jun-21	-£20,128,759	-£1,725,241	£0	-£21,854,000
Jul-21	-£21,854,000	£0	£0	-£21,854,000
Aug-21	-£21,854,000	£0	£0	-£21,854,000
Sep-21	-£21,854,000	£0	£0	-£21,854,000
Oct-21	-£21,854,000	£0	£0	-£21,854,000
Nov-21	-£21,854,000	£0	£0	-£21,854,000
Dec-21	-£21,854,000	£0	£0	-£21,854,000
Jan-22	-£21,854,000	£0	£0	-£21,854,000
Feb-22	-£21,854,000	£0	£0	-£21,854,000
Mar-22	-£21,854,000	£0	£0	-£21,854,000
Apr-22	-£21,854,000	£0	£9,201,287	-£12,652,713
May-22	-£12,652,713	£0	£11,465,554	-£1,187,159
Jun-22	-£1,187,159	£0	£1,187,159	£0
Jul-22	£0	£0	£0	£0
Aug-22	£0	£0	£0	£0
Sep-22	£0	£0	£0	£0
Oct-22	£0	£0	£0	£0
Nov-22	£0	£0	£0	£0
Dec-22	£0	£0	£0	£0

Annex. 2 Anthology Loan Exposure